IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.296 OF 2007

Prasad T. Lad .. Petitioner.

Versus

Pravin Viram Satra & Ors. .. Respondents.

Mr.Arif Bookwala, Senior Counsel i/b.Niranjan & Co. for petitioner.

Mr.E.P.Bharucha, Senior Counsel i/b.Vimla & Co. for respondent Nos.1 and 2.

Mr.D.D.Madon, Senior Counsel i/b.Mr.Bharat Jhaveri for respondent No.7.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 26th October, 2007.

P.C.:

1. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996. The petitioner seeks interim measures, more particularly, with regard to a partnership firm M/s.Shreeniwas Developers. According to the learned Senior Counsel appearing for the petitioner, the registration number of this firm is stated in prayer clauses (a) and (b) of the petition and, therefore, all its assets and properties should not be permitted to be alienated, transferred, encumbered or parted with possession till the Arbitrator is appointed and the proceedings before the Arbitral Tribunal commence or till such further time as this Hon'ble Court may deem fit and proper.

2. At the hearing of this petition, on earlier occasion, I had passed an order recording statement of Mr.Bharucha that respondent Nos.1 and 2 would grant inspection of the accounts of the partnership firm so also furnish Xerox copies of the same.

3. Further, an affidavit is filed by the petitioner complaining about non availability of audited accounts, which contention is denied by the respondent Nos.1 and 2. There are other respondents, who claim that their rights have intervened and they have nothing to do with the dispute between persons, claiming to be partners of the firm.

4. On the last occasion, Mr.Bharucha had expressed the willingness of respondent Nos.1 and 2 to deposit a sum of Rs.5.00 crores in this Court without prejudice to the rights and contentions of the respondent Nos.1 and 2 and other parties including the petitioner.

5. This statement has been reiterated before me today and Mr.Bharucha after taking instructions from respondent No.1, who is present in Court states that a sum of Rs.5.00 crores would be deposited on or before 26th November,

2007. Upon deposit, the Prothonotary and Senior Master of this Court to invest this sum in a Nationalised Bank in a fixed deposit, initially for a period of one year and later on to abide by such orders and directions as are issued by this Court or the Arbitral Tribunal. The statement of the respondent Nos.1 and 2 is accepted. Needless to state that the same constitutes an undertaking to this Court to deposit the sum.

6. It is in the light of this without prejudice statement and offer of the respondent Nos.1 and 2 that I have declined to consider the prayers made in the petition for interim measures. More so, considering that both sides are aware of the pendency of an application under Section 11 of the Arbitration and Conciliation Act, 1996. In my view, they would be well advised to make detailed submissions on Interim Measures after the said application is disposed of.

7. To this course, the petitioner as also respondent Nos.1 and 2 are agreeable. Thus, the amount of Rs.5.00 crores would be deposited without prejudice to the rights and contentions of the petitioner and respondent Nos.1 and 2 in the pending application under Section 11 of the Arbitration and Conciliation Act, 1996 so also any

application likely to be made for interim measures either before this Court or the Arbitral Tribunal. This would not prejudice the Respondents and they are free to urge that the matter cannot go to Arbitration at all.

8. In the event of default being committed by respondent Nos.1 and 2, in addition, to initiating proceedings under Contempt of Courts Act, 1971, the petitioner would be at liberty to apply for such interim measures as he is advised including pressing all prayers in the present petition.

9. In the event of the application under Section 11 of the Arbitration and Conciliation Act, 1996 being rejected by this Court, then, the respondent Nos.1 and 2 would be at liberty to apply for withdrawal of the amount deposited in this Court. Needless to state that if the application under Section 11 of the Act is allowed, the petitioner would be at liberty to apply for further interim reliefs or press for interim measures in terms of the prayers made in the petition, either before this Court or the Arbitral Tribunal.

10. Arbitration petition is disposed of in the above terms.

(S.C.Dharmadhikari, J.)